

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

JOSEPH "JOEY" E. DODD, JR,

Plaintiff,

v.

WOODS MEMORIAL HOSPITAL,
McMINN COUNTY JUSTICE CENTER,
SHERIFF STEVE FRISBIE, CHIEF TIM
SMITH, LIEUTENANT PENNI PALMER,
SERGEANT RICK CLAYTON, NURSE
KAY STANSBERRY,

Defendant.

No. 1:06-cv-56

Chief United States Judge Collier

MEMORANDUM AND ORDER

Plaintiff Joseph "Joey" E. Dodd, Jr. ("Dodd" or "Plaintiff") has filed a *pro se* prisoner civil rights complaint pursuant to 42 U.S.C. § 1983 (Court File No. 3). Presently before the Court is Plaintiff's motion for judgment by default (Court File No. 21) and Defendants', Woods Memorial Hospital and Kay Stansberry, response (Court File No. 23). Defendants Sheriff Steve Frisbie, Chief Tim Smith, Lt. Penni Palmer, and Sgt. Rick Clayton have failed to file any type of response in this case.

Plaintiff's request for default judgment against Woods Memorial Hospital and Kay Stansberry will be **DENIED** as those Defendants filed a timely response on August 25, 2006 (Court File No. 20). It appears Plaintiff's address changed on or about August 21, 2006. Nevertheless, Defendants', Woods Memorial Hospital and Kay Stansberry, response reflects a copy was sent to Plaintiff at his present address, Brushy Mountain Correctional Complex, on August 25, 2006. Be that as it may, apparently, Plaintiff did not receive a copy of their response. Accordingly, the Clerk is **DIRECTED** to send Plaintiff a copy of the response filed by Woods Memorial Hospital and Kay

Stansberry (Court File No. 20). Now, the Court turns to Plaintiff's request for a default judgment against the remaining defendants who were served on or about July 5, 2006, but who have failed to file any type of response.

The Federal Rules of Civil Procedure require a defendant to serve an answer within twenty days of being served with a summons and complaint. FED. R. CIV. P. 12(a)(1)(A). If the defendant fails to respond or defend the action, the clerk is authorized to enter a default, FED. R. CIV. P. 55(a), and the court may then enter a default judgment against such party. FED. R. CIV. P. 55(b). Applying the liberal construction rule since Plaintiff is *pro se*, the Court is inclined to re-characterize Plaintiff's motion for judgment by default (Court File No. 21) as a motion to the clerk to enter a default. However, the Court will **STAY** such a ruling pending the defendants' response to this Order.

The Court has considered certain factors in this case, including the fact Plaintiff has not identified an amount of money he is seeking but rather requests defendants be held accountable for their actions, be compelled to comply with the law, and be ordered to pay punitive damages; the amount of prejudice to Plaintiff if a default is not entered; the fact there appear to be material factual and legal issues regarding whether Plaintiff was subjected to deliberate indifference to his serious medical needs in violation of his constitutional rights; and the harsh effect a default judgment might have, given the damages sought from the defendants. The Court has also considered that the circumstances seemingly show a clear default, since the five defendants have not answered the complaint, though it was served on them several months ago. Some of these factors weigh in favor of the entry of a default, while others weigh against it. The Court, therefore, will **STAY** a ruling on the motion, pending a response from those defendants.

Accordingly, it is hereby **ORDERED** that defendants Sheriff Steve Frisbie, Chief Tim Smith, Lt. Penni Palmer, and Sgt. Rick Clayton **SHOW CAUSE**, within ten days of entry of this order, as to why they have failed to answer or otherwise respond to Plaintiff's complaint, in the manner and within the time limits established in the Federal Rules of Civil Procedure.

SO ORDERED.

ENTER:

/s/
CURTIS L. COLLIER
CHIEF UNITED STATES DISTRICT JUDGE